TECHNOLOGIES MANAGEMENT INC.

163 E. Morse Blvd.
Suite 300
P.O. Drawer 200
Winter Park, FL
32790-0200

407-740-8575
Fax: 407-740-0613

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April 11, 1995

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RE: CC Docket No. 92-77

Dear Mr. Caton:

Enclosed for filing are the original and nine (9) copies of the Comments of U.S. Osiris Corporation in CC Docket No. 92-77 regarding CompTel's Filing Proposing a Rate Ceiling on Operator Assisted Calls.

Please acknowledge receipt of this ifling by date-stamping the extra copy of this cover letter and returning it to me in the self-addressed, stamped envelope provided for this purpose.

Quetions regarding this filing may be directed to me at (407) 740-8575.

C.W. Wightman

Connie Wightman
Consultant to U.S. Osiris Corporation

cc: George Lebus, USOC
FCC Contractor, ITS
file: USOC-FCC

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FEDERAL COMMUNICATIONS COMMISSION

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In the Matter of Billed Party Preference for 0+ InterLATA Calls Re: Comments on CompTel's Filing Proposing a Rate Ceiling on Operator Service Calls.	)))))	CC Docket No. 92-77

COMMENTS OF U.S. OSIRIS CORPORATION ON COMPTEL'S FILING PROPOSING A RATE CEILING ON OPERATOR ASSISTED CALLS

U.S. Osiris Corporation
8828 Stemmons Freeway
Suite 212
Dallas, Texas 75247

(214) 640-4110

Connie Wightman
Technologies Management, Inc.
P.O. Drawer 200
Winter Park, FL 32790-0200

(407) 740-8575

Consultant to
U.S. Osiris Corporation

April 11, 1995

Before the
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of Billed Party Preference for 0+ InterLATA Calls RE: Comments on CompTel's Filing Proposing a Rate Ceiling on Operator Service Calls	)))))	CC Docket No. 92-77

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COMMENTS OF
U.S. OSIRIS CORPORATION

U.S. Osiris Corporation ("USOC"), a privately held Texas-based company providing operator services, respectfully submits the following comments in the captioned proceeding, regarding Billed Party Preference and the rate ceiling proposed by the Competitive Telecommunications Association ("CompTel") et al.

I. Introduction

U.S. Osiris Corporation continues to assert its opposition to Billed Party Preference and in previous comments has filed quantitative proof that consumers exercise the option to use the carrier of their choice as evidenced by the disproportionate number of dial-around calls. More than 65% of all calls today are placed using the caller's carrier of choice. These calls are placed using an access code or alternative dialing method, such as an 800 number.

USOC continues to search for the problem Billed Party Preference and now rate ceilings will resolve. It is obvious, given the consumer choice data through dial-around figures, that Billed Party Preference is unnecessary. BPP is too expensive to implement given the time period within which any potential benefits may be reaped and the alternative investments which could be made to the country's telecommunications infrastructure.

Rate ceilings are yet another attempt to resolve isolated incidences of abuse with an industry-wide solution.

The implementation of an OSP rate cap assumes all operator service providers are alike. Beside the obvious differences in size and cost structure, there is another distinction between providers. Some OSPs provide service solely or primarily to the hospitality industry, while others provide service solely or primarily to the private pay telephone industry. The differences between the hospitality and private pay telephone industries is significant and cannot be overlooked in light of the rate cap proposal.

Furthermore, an industry-wide rate cap is an administrative nightmare to monitor and enforce - something the FCC is neither funded for nor practiced at handling.

II. Rate Caps Are Not Justified

When the first operator assisted calls were processed by a carrier other than AT&T or a LEC they were not handled by AT&T's major competitors. Small entrepreneurial companies spent millions of dollars in research and development, negotiated costly billing and collection agreements with local exchange carriers, and took enormous financial risks to open a segment of the market that had been previously closed to competition. Now consumers have real choices for all their long distance services, including operator assisted calling. These major leaps forward would have been inconceivable if rate caps had been implemented from the on-set of the competition in this market segment. Without the ability to recoup investment, to pay significant commissions and provide returns commensurate with risk, operator service providers could not have competed with one of the last great monopolies in telecommunications.

Rate caps are no more appropriate now then they would have been in 1987. This is not a monopoly service that needs a regulatory substitute for the mitigating effects of competition. When prices are too high in a competitive market, consumers make alternative choices. When service is unsatisfactory in a competitive market, new services are developed to address consumer needs. This is exactly what has happened in the operator services market. Dial-around traffic is estimated at 66% of all transient calling, and growing. Consumers have alternatives and are exercising freedom of choice in large numbers. No consumer today is forced to pay an exorbitant rate for an operator assisted calls unless the consumer chooses not to exercise that choice.

The number of complaints against operator service providers is not significant, but the publicity some of the complaints have received not only points out the most egregious rates and charges, but seems to assume the industry as a whole operates as one synchronized unit. There are legitimate cases of gross over-charging, however rate caps will not cure this problem because they cannot be adequately enforced. Alternative resolution methods, which partner regulators with an innovative industry offering consumer choice, would be more effective.

The apparent complaint level of consumers against operator service providers fall into several categories. Many consumers complain of high rates even when the rate charged is equal to that of AT&T. This common phenomena has many explanations, but it all boils down to consumer expectations. Many consumers are now conditioned to believe that rates of companies other than AT&T are unreasonably high. Many consumer complaints center around the fact that the consumer did not get the carrier he or she expected. Enforcement of posting by all aggregators, including - and especially - LEC public telephones would greatly reduce this type of complaint.

The FCC has within its power today the ability to determine whether rates are just and reasonable. If the Commission chose to exercise that authority over carriers with a history of charging extraordinarily high rates, incidences of over charging would be greatly diminished. Although on the surface this approach may appear to be more cumbersome than a general rate cap, it accomplishes the same ends without distorting the present and future of the market. It deals directly with the problem causer and does not attempt to treat an entire industry ubiquitously. In the long-run an approach focused on gross abusers will prove less expensive and administratively complex than industry-wide enforcement.

Today a consumer can buy a round trip airline ticket from Orlando to Washington, D.c. for anywhere from $486 to $1,700 - a difference of more than 300%. In fact, on the same exact flight one passenger who paid the $486 fare may be sitting next to one who paid $1,700. Consumers have become aware of the nuances in offerings and are more aware of the scope of their decisions. Consumers have learned to choose more wisely. But it is not the role of government to insure that each consumer pays the same rate for similar services. Elasticity and willingness to pay are different by consumer segment and result in a rate structure similar to that described above in the airline industry. To attempt to regulate rates in a fully competitive market is to lose faith in the forces of competition and the benefits it brings to the public.

The benefits of operator service competition are not always obvious to consumers. Regulators are empowered by the public to understand and react to economic forces the public lacks the technical expertise to comprehend. Theoretically, a highly regulated monopoly should always be able to deliver goods at the lowest possible cost.

However, we have come to understand that the price we pay for a monopoly is stifled innovation, reduced consumer choice and ultimately, higher prices for certain goods and services.

Alternatively, competition drives prices closer to costs, encourages innovation and provides consumers with meaningful options. This doesn't guarantee lower rates for all goods and services because cross subsidies cannot be sustained. While per minute rates for transmission have declined markedly in the past decade, operator service charges have increased, in spite of industry wide automation. There are many possible explanations and they are contributing factors to some degree or another in the rate equation. But the net result is that operator assisted calling rates have sought their natural rate level. To the extent that the resulting level is considered unacceptable by the public, the industry responded with dial around alternatives (800 number campaigns) and consumers took advantage of the education afforded them by providers and exercised their option to utilize access code dialing.

III. The Operator Service Industry is not Homogenous

The operator services industry primarily targets two customer segments: the hospitality market (hotels/motels) and the pay telephone market. Those OSPs which primarily serve the hospitality market view the hotel as the customer while those that primarily serve pay telephones view the end user placing a call as the customer.

This distinction is an important one because the reaction of the different customer segments have brought different market forces to bear. Over the last two years, downward pressure has been brought to bear on hospitality rates. This pressure has come from hostels/motels whose guests have complained about telephone charges and increased their dial-around usage. Such activities have resulted in pressure from hotels/motels to operator service providers to lower rates. U.S. Osiris rates to the hospitality industry, are lower today on average, than they were two years ago.

The pay telephone industry has not reacted to dial-around in the same manner. Commissions to pay telephone owners is the highest cost component for an operator service provider to pay telephones. Instead of downward pressure on rates, escalating commission levels have resulted in higher end-user rates.

A rate cap proposal which treats all operator service providers, and as a result all operator service provider customers, alike does the industry and its constituents a gave injustice.

IV. The CompTel Proposal

CompTel and others have proposed a rate cap as the lesser of two evils: Billed Party Preference or Rate Caps. Some carriers embrace a rate cap as a means of driving out competitors. Others embrace a rate cap as a means of saving an industry that would otherwise be destroyed by the pen with the implementation of Billed Party Preference. This is not a basis for regulatory policy making. Each proposal must be considered on its own merits and based on how it serves the public interest. The record simply does not support Billed Party Preference and rate caps are not a viable alternative in today's regulatory environment.

CompTel, et al. positions its rate cap recommendation under the guise of simplicity: per minute postalized rates (i.e. no time-of-day/day-of-week, distance, or call-type rate differences). It assumes consumers are confused by and cannot understand different combinations and permutations of rates. On the contrary, consumers are used to distance sensitive and time-of-day-/day-of-week sensitive rate plans.

In addition, the specific rate ceiling proposed by CompTel is so contrary to any rate plan utilized within this industry as to make it more complex and illogical than the existing variety consumers must deal with today. There is no per minute charge to the CompTel proposal. Actually, it is difficult to ascertain the charge for a partial period call. It is difficult to determine the capped rate for a 3.5 minute call, for example. The varying per-minute usage charge, depending on the length of the call, flies in the face of the industry's prevailing fixed plus usage-based variable cost structure.

The proposed rate plan clearly benefits the private pay telephone industry. Payphone calls are generally of a shorter duration than calls made from hospitality locations such as hotels and motels. The very industry which creates the most abuse is initiating a rate cap plan which allows for a higher per minute end user charge for shorter duration calls.

In addition to the private pay telephone industry support for this plan, major interexchange carriers and local exchange carriers have also demonstrated support for the CompTel recommendation. This too is easy to understand. Interexchange and local carriers are anxious to rid the regulatory arena of BPP. Capital investment is high and there is market share at risk. The impact on earnings, shareholders and therefore stock prices is frightening. These carriers are willing to replace BPP with almost any other solution. Similarly, some local exchange carriers do not welcome the huge investment required by billed Party Preference. Support of a rate cap provides the appearance of a solution without having to increase investment.

V. The Proposed Rate Caps are Arbitrary

The basis of the proposed rate cap is clearly not cost. Although different cost structures for 1+ carriers is recognized - and there is no attempt to cap 1+ services - disregard for cost structure differences between operator service providers seems widespread.

There are four major cost components in an operator assisted call: (1) transmission; (2) operator treatment; (3) billing expense and; (4) commissions. The level of these costs is based on where the call originated, the extent of operator intervention required and the duration of the call. The proposed rate cap is illogical in that it places a disproportionate emphasis on the duration of the call and ignores the fixed costs - those costs which remain relatively stable regardless of call duration.

If the proposed cap is not based on cost, then it may logical to assume it is based on consumer expectations. Yet no consumer surveys or other market data is presented to indicate that consumer desires have any role in the proposed cap. The proposed cap merely assumes that all consumers have the same expectations and desires.

An arbitrary rate cap will distort the market. It will also become a rate floor as carriers revise rates upward to compete by obtaining higher margins on behalf of their stockholders and aggregators.

Once this Commission opts to substitute a price cap for competitive forces in a clearly competitive market, it abandons its intellectual basis for many decisions that have shaped long-term regulatory policy. This should not be undertaken lightly and should not even be considered until other alternatives have been exhausted...such as taking specific action against offending carriers in those markets that have generated legitimate complaints.

VI. Rate Caps are an Administrative Burden.

If the FCC were to approve rate caps today, the cost of implementing such a recommendation in the short term would be almost zero. New tariffs would be required by all providers and a quick review to ensure the tariffed rates fell at or below the cap would be a slight workload increase. However, in the longer term, the FCC could incur great administrative expense for monitoring regulatory compliance.

The FCC is not currently funded, manned nor prepared to handle pro-active rate cap compliance. Such a program would require random test calls be made and evaluated periodically. In the end, the Commission will assume all carriers who file tariffs indicating rates at or below the cap are charging what they have filed. The Commission will result to handling compliance on a reactive individual case basis.

As consumer complaints are made, the industry and the FCC should work together not just to resolve the individual complaints, but to understand and eliminate the root cause. All operator service providers are not alike. And those differences will work against any across-the-board solutions above and beyond the regulations already in place.

Publically addressing abusers through the institution of rate caps will eventually backfire on the FCC and the entire industry. Without adequate enforcement mechanisms, either through billing and collection systems and controls or other means of policing actual charges, the public will resent the lack of bite behind the bark of this effort. Essentially the FCC will resort to resolving complaints individually with specific companies. Since that will become the end result, consumers should be spared false securities and perceptions, and the industry should be spared from costly billing, posting and other changes, and work to specific instances of abuse today.

VII. The FCC Does Not Have Legal Authority for an OSP Rate Cap

The CompTel proposal assumes, without discussing the issue, that the Commission has the authority to prescribe a binding rate cap for OSPs. Yet the legal basis for an OSP rate cap is difficult, if not impossible to find in the Communications Act. Indeed, the Telephone Operator Consumer Services Improvement Act of 1990 ("TOCSIA") added specific provisions regarding rate competition and Commission rate review for OSPs that quite clearly suggest the FCC does not have the power to impose a mandatory rate cap at this time.

The key to the TOCSIA provision, adding Section 226 to the Act, directed the Commission to report to Congress on the state of service and rate competition in operator services.[1] Further, the Commission was directed to conduct a "rulemaking" to "establish regulations for (ensuring) that rates and charges for operator services shall be just and reasonable," unless the Commission found and reported to Congress that "market forces" were sufficient to secure reasonable OSP rates.[2] In other words, in order to prescribe by regulation a mechanism for rate reasonableness for operator services, the Commission is required, as a precondition, to determine that there has been a market failure requiring regulatory

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1 47 U.S.C. §226(h)(3)(B).

2 Id. §226(h)(4).

intervention in the first place.

Neither the CompTel proposal nor the Commission's various Notices in the BPP proceeding make such a determination. In fact, the Commission has reported to Congress and has consistently recognized since then, that competitive market forces in the operator services market are maintaining reasonable rates without regulation. And even if there were a record in this Docket for a contrary finding, it is clear under Section 226(h)(4) that the FCC is required to conduct a general "rulemaking" on regulation for OSP rate reasonableness. The Commission has not done so, and its request for comment on the CompTel rate cap proposal certainly is not the type of rate reasonableness rulemaking contemplated by TOCSIA. In sum, the Commission's legal basis for adoption of the CompTel proposal - or any other OSP rate cap - is extremely tenuous at best. A better course would be to avoid this difficult legal issue by choosing targeted enforcement in lieu of a mandatory, industry-wide OSP rate cap.

VI. Conclusion

There are abusers in every industry and unfortunately the operator service provider industry is no exception. However, the operations and innovations of all providers should not be sacrificed in an effort to squelch the abusers.

U.S. Osiris has demonstrated that rate caps are an industry attempt to ensure the demise of BPP - a concept which cannot justifiably be implemented under any circumstances. It has demonstrated that the operator services industry is not homogenous, neither in cost structure or target market, and therefore rate caps will only provide the perception of problem resolution. U.S. Osiris has demonstrated that the structure of the proposed rate cap is unfair in so far as it favors pay telephone providers over the hospitality industry in general. It has demonstrated that the CompTel proposal specifically is self-serving to those pay telephone service providers. Lastly, it has demonstrated that an industry-wide rate cap would impose an unnecessary administrative burden on the FCC.

In the alternative, U.S. Osiris proposes that the FCC gather and share additional data before making the gross generalization that a single solution for a complex industry will squelch consumer complaints. All complaints at the federal level should be categorized by hospitality versus payphone. Further, all rate-related complaints should be categorized to determine whether or not the complaining party has been charged AT&T-like rates so that this phenomenon of public relations bashing of non-dominant carriers be quantified.[3] Furthermore, incidences of abuse should be handled on an individual case basis. The FCC should produce an annual report containing aggregated data on complaints and their resolution.

Technologies Management, Inc., on behalf of its client, U.S. Osiris Corporation, respectfully submits these comments in CC Docket No. 92-77.

April 11, 1995

C.M. Wightman

Connie Wightman
Consultant to U.S. Osiris Corporation
P.O. Drawer 200
Winter Park, Florida 32790-0200

[3] These issues could be addressed at the industry-wide conference scheduled for April 27, 1995.